more aggressive regulatory posture in the near term will ultimately allow for more expeditious deregulation. The "pro-competitive, deregulatory national policy framework" envisioned by Congress is a transitional mechanism which assumes an active role by the Commission in "opening all telecommunications markets to competition."[40] As the Commission has elsewhere recognized, in the "new regulatory regime," the Commission's task is to "affirmatively promote efficient competition using tools forged by Congress."[41] Certainly, Congress expected no less:

> In enacting section 272, Congress recognized that the local exchange market will not be fully competitive immediately upon its opening. Congress, therefore, imposed in section 272 a series of separate affiliate requirements applicable to the BOCs' provision of certain new services and their engagement in certain new activities . . . We reject as unfounded the assertion that the Commission lacks authority to adopt regulations implementing section 272. . . . Contrary to those parties that argue that section 272 is self-executing, we find that Congress enacted in section 272 broad principles that require interpretation and implementation in order to ensure an efficient, orderly and uniform regime governing BOC entry into in-region interLATA telecommunications and other markets covered by section 272.[42]

In implementing the local competition provisions of the 1996 Act, the Commission has followed a more aggressively regulatory approach where such a stratagem will speed the emergence of competitive alternatives, recognizing the such competition will pave the way for ultimate deregulation. Thus, for example, the Commission rejected arguments that it should not prescribe a minimum set of unbundled network elements that incumbent LECs must make available upon request to new market entrants, reasoning that "the procompetitive goals of section

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[40] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) ("Joint Explanatory Statement").

[41] Local Competition First Report and Order, FCC 96-325 at ¶ 1.

[42] NonAccounting Safeguards Order, FCC 96-489 at ¶ 23.

251(c)(3) will best be achieved through the adoption of such a list."[43] Recognizing that it was "critical to implementing Congress's pro-competitive, deregulatory national policy framework to establish among the states a common, pro-competition understanding of the pricing standards for interconnection and unbundled elements, resale and transport and termination," the Commission, in the face of strong criticism from incumbent LECs and the States, also elected to establish pricing methodologies and default pricing ranges.[44] And the Commission, again confronted by heavy criticism by the incumbent LECs and the States, adopted a number of national rules and guidelines in implementing Section 251, recognizing that "some national rules are necessary to promote Congress's goals for a national policy framework and serve the public interest."[45] As explained by the Commission:

> We find that incumbent LECs have no economic incentive, independent of the incentives set forth in sections 271 and 274 of the 1996 Act, to provide potential competitors with opportunities to interconnect with and make use of the incumbent LEC's network and services. Negotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations in which each party owns or controls something the other party desires. Under section 251, monopoly providers are required to make available their facilities and services to requesting carriers that intend to compete directly with the incumbent LEC for its customers and its control of the local market. Therefore, although the 1996 Act requires incumbent LECs, for example, to provide interconnection and access to unbundled elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, incumbent LECs have strong incentives to resist such obligations. The inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing

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[43] Id. at ¶¶ 241 - 248.

[44] Id. at ¶¶ 618 - 641.

[45] Id. at ¶ 41.

> bargaining power in part because many new entrants seek to enter national or regional markets. National (as opposed to state) rules more directly address these competitive circumstances.[46]

TRA recommends that the Commission in implementing the NPRM's prescriptive approach, should establish "interstate access rates, as well as prices for unbundled network elements offered pursuant to the 1996 Act, . . . based on the forward-looking costs of those services or elements."[47] TRA agrees that access services should be priced at "Total Service Long Run Incremental Cost" ("TSLRIC") and that unbundled network elements should be priced at "Total Element Long Run Incremental Cost" ("TELRIC"). TRA concurs that "[u]nder both TSLRIC and TELRIC-based pricing methodologies, prices should be based on forward-looking economic costs, including a reasonable allocation of forward-looking joint and common costs, and allow incumbent LECs to earn a fair, risk-adjusted rate of return on their investment."[48] As the Commission has elsewhere recognized:

> Adopting a pricing methodology based on forward-looking, economic costs best replicates, to the extent possible, the conditions of a competitive market. . . . Because a pricing methodology based on forward-looking costs simulates the conditions in a competitive marketplace, it allows the requesting carrier to produce efficiently and to compete effectively, which should drive retail prices to their competitive levels. We believe that our adoption of a forward-looking cost-based pricing methodology should facilitate competition on a reasonable and efficient basis by all firms in the industry . . . [49]

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[46] Id. at ¶ 55.

[47] Notice, FCC 96-488 at ¶ 220.

[48] Id. at ¶ 222.

[49] Id. at ¶ 679.

TRA recommends that in implementing a prescriptive approach to access charge reform, the Commission should "require incumbent LECs to conduct TSLRIC/TELRIC studies, and create new prices for individual interstate access services on the basis of those studies."[50] Following public comment, the Commission would then reset access prices and thereafter rely on price cap regulation to keep rates just and reasonable. TRA believes that this would be the preferred prescriptive approach because a mere reinitialization of price cap indices ("PCIs") would not, as recognized by the NPRM "guarantee that the incumbent LECs' rate structures would be reasonable."[51] Retention of price cap regulation would avoid the need for annual TSLRIC/TELRIC studies to recelebrate interstate access charges. However, in order to ensure that future interstate access charges accurately reflect the forward-looking, economic cost or originating and terminating interstate, interexchange traffic, it will be necessary to increase the productivity offset to a more realistic level.

C. Meaningful Facilities-Based Competition Should be a Precondition to any Substantial Relaxation of Price Cap or Other Access-Related Competition (¶¶ 149 - 160)

The NPRM proposes to remove from price cap and tariff regulation interstate access services that are subject to substantial competition.[52] Such deregulation and detariffing would be undertaken on a service-by-service and an area-by-area basis, consistent with the manner in which the Commission relieved AT&T of price cap regulation. With respect to

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[50] Id. at ¶ 238.

[51] Id. at ¶ 223.

[52] Notice, FCC 96-488 at ¶ 149.

AT&T, the Commission analyzed a variety of indicia of market power, including market share, demand responsiveness, supply responsiveness and AT&T's pricing behavior.[53] While the NPRM is cognizant of differences between AT&T and the incumbent LECs, in particular the incumbent LECs' control of "bottleneck" facilities, it nonetheless suggests that "the analytical framework that [the Commission] used to streamline AT&T's services would appear to be an appropriate method for effectively deregulating incumbent LEC services.[54] TRA concurs with the NPRM in many respects, but differs as to several key points.

TRA agrees with the NPRM that the "substantial competition" analysis should be performed on a service-by-service basis, "allow[ing] incumbent LECs to price competitively where competition has developed, while not permitting incumbent LECs to raise prices for services for which competition has not developed sufficiently."[55] TRA also agrees with the NPRM that regulation should be relaxed only within the geographic areas in which "substantial competition" is present, and concurs with the NPRM that a statewide analysis of competition would not be granular enough in focus.[56] Because it agrees with the NPRM that competition may vary significantly within any predetermined zone, TRA submits that no such uniform geographic area should be designated. Instead, TRA recommends that when an incumbent LEC seeks

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[53] Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd 5880 (1991) ("First Interexchange Competition Order"), 6 FCC Rcd. 7255 (1991), 6 FCC Rcd. 7569 (1991), 7 FCC Rcd. 2677 (1992), *recon.* 8 FCC Rcd. 2659 (1993), 8 FCC Rcd. 3668 (1993), 8 FCC Rcd. 5046 (1993), *recon.* 10 FCC Rcd 4562 (1995); Revisions to Price Cap Rules for AT&T, 10 FCC Rcd 3009 (1995).

[54] Notice, FCC 96-488 at ¶ 150.

[55] Id. at ¶ 151

[56] Id. at ¶ 155

deregulation/detariffing, it should be required to identify the geographic area in which it is facing "substantial competition" and for which it is seeking regulatory relief. The burden then would be on the petitioning incumbent LEC to make a clear and convincing showing not only that it is facing "substantial competition," but that such competition is present throughout the identified area.

TRA disagrees with the NPRM's suggestion that price cap regulation should be removed even in the absence of "substantial competition" if an incumbent LEC "cannot influence price movements."[57] A standard of this sort is not only far too nebulous and subject to manipulation, but is predicated on an assessment that is changeable in the future; competition is the only constant. TRA also opposes any blanket regulatory relief, such as the immediate removal of special access services offered at speeds of DS1 or higher from price cap regulation.[58] In certain, highly confined geographic areas, competitive alternatives do exist for such special access services, but the availability of such alternative service offerings remains spotty even within the most contested markets.[59] Moreover, the alternative facilities still tend to be used

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[57] Id. at ¶ 152

[58] Id. at ¶ 153.

[59] "The key targets of the competitive access providers are large downtown office buildings in cities where the deployment cost and regulatory constraints of new fiber systems are not excessive. Typically a cable several miles in length containing 20 to 200 fibers is deployed in existing conduit or in subway tunnels in a ring structure. The ends of the fiber cable are connected at a hub location. At least one fiber pair in the ring is typically dedicated to a single office building . . . The companies typically have offered non-switched services initially, and although they provide end-user to end-user links, much of their business is either for use by customers to access a long distance carrier or for use by interexchange carriers to establish or interconnect points of presence in a metropolitan area. . . . As the competitive access providers expand to more cities and attract more customers, they selectively impact the growth of demand of the local exchange carriers. CAPs, however, can only serve those customers they can access. Their customers may, therefore, still be dependent on the local telephone companies. Kraushaar, J., Fiber

predominantly for purposes of redundancy. Incumbent LECs, accordingly, should be required not only to make a "substantial competition" showing, but to identify the area in which such "substantial competition" is present, before being afforded any regulatory relief.

With respect to the "competitive factors" identified by the NPRM, TRA concurs that supply and demand elasticities are relevant considerations.[60] While TRA agrees with the NPRM that market share is not determinative, TRA disagrees that "a high market share does not necessarily confer market power."[61] The experiences of TRA's resale carrier members in both the interexchange and the wireless markets confirm that carriers possessed of large market shares are more prone to and can more readily act in an anticompetitive manner to disadvantage competitors. As discussed in an earlier section of these comments, AT&T, among all other interexchange network service providers, was by far and away the worst offender when it came to the strategic manipulation and abuse of operations support, among other things delaying order provisioning and supplying incomplete, inaccurate and late call detail. AT&T was also the worst offender regarding abuse of carrier confidential data, regularly using such competitively-sensitive information to raid the customer bases of its resale carrier customers.[62] AT&T, of course, had

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Deployment update - End of Year 1995, pp. 33-34 (July, 1996). The 13 largest CAPs collectively serve approximately 10,000 buildings, using less than 15,000 sheath miles of fiber. Id. at Table 15.

[60] Id. at ¶¶ 156, 157.

[61] Id. at ¶ 158.

[62] Among the respondents to a survey of its resale carrier members conducted by TRA in 1994, nearly 80 percent of those identifying AT&T as their long distance network service provider reported that AT&T had used their confidential and proprietary information to solicit their customers, indicated that such abuses occurred "very frequently," "frequently" or "regularly" and were "very serious" or "serious," and confirmed that they had lost a "large number" or a "medium number" of customers as a result of such abuses. For all the rest of the long distance network service providers combined, there were only two

a market share three times larger than its largest competitor, more than twice as large as the aggregate market share of its two largest competitors and larger than the aggregate market shares of all of its competitors together. Problems similar to those encountered in the interexchange market continue to plague TRA's resale carrier members in the wireless environment as well, where cellular carriers generally have market shares ranging between 40 and 60 percent. Hence, market share should be a pertinent consideration, particularly when that share approaches 100 percent.

By way of contrast, TRA agrees with the NPRM that pricing is not a reliable measure of competition.[63] The NPRM is correct that "[w]hile below-cap pricing may indicate a market with high supply and demand elasticities, it could also occur because the incumbent LEC is behaving strategically in order to be relieved of regulation."[64] Little, if any, significance should be given to a factor which is readily subject to strategic manipulation.

The principal source of disagreement TRA has with the NPRM is the NPRM's assumption that competition can rise to the level of "substantial competition" even if it is non-facilities-based competition. In relaxing regulatory constraints on AT&T, the Commission relied heavily on the "considerable amounts of raw transmission capacity" *owned* by several of AT&T's competitors."[65] As explained by the Commission:

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reports of "frequent" or "regular" abuse and only three reported instances of "very serious" or "serious" abuses and "large numbers" or "medium numbers" of lost customers.

[63] Notice, FCC 96-488 at ¶ 159.

[64] Id.

[65] First Interexchange Competition Order, 6 FCC Rcd. 5880 at ¶ 43.

> In the long distance market, supply elasticity depends to a large extent on the capacity of the networks of AT&T's competitors. . . . AT&T's competitors appear to have sufficient network capacity to serve a significant portion of AT&T's commercial long distance traffic. Much of the network capacity owned by the long distance carriers is fiber optic technology, which is capable of expansion to serve increasingly larger amounts of traffic at relatively low cost. In 1993, AT&T owned 47 percent of the total fiber miles while serving 60 percent of the minutes of use of the interexchange market. In contrast, all other interexchange carriers owned 53 percent of the total-fiber miles while serving 40 percent of the interexchange market. It therefore appears that AT&T's competitors have a greater supply of unused fiber capacity than AT&T.[66]

In short, it was network capacity owned and controlled by competitors that served to constrain AT&T's conduct. As explained by the Commission, in order to constrain market behavior, competitors must be not only willing, but able, to serve customers that desire to switch carriers in response to a price increase. A competitor which is reliant upon an incumbent LEC for network services and/or network components might not be able to serve a large number of new customers if the incumbent LEC is unable to provision, or elects to interfere with the provisioning of, those service orders. Only a carrier with its own network can be relied upon to handle the new traffic requirements.

Accordingly, TRA submits that a market will only be "substantially competitive" when it is populated with one or more facilities-based providers with one or more independent networks capable of serving the universe of subscribers for the service in question. It is thus not enough to merely have a switch or a fiber ring in a market to render that market "substantially competitive." Nor is it enough to selectively wire certain office buildings or complexes. What

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66 Revisions to Price Cap Rules for AT&T, 10 FCC Rcd 3009 at ¶ 22.

is necessary is a network of loops, switches and interoffice mileage wholly apart from the network operated by the incumbent LEC. And even in this circumstance, the need to interconnect with incumbent LEC facilities will render the alternate network operator vulnerable to abuse, particularly if the incumbent LEC has by far and away the largest market share.

D. Incumbent LECs are Not Guaranteed Full Recovery of Their Embedded Costs (¶¶ 247 - 270)

One of the key issues that must be addressed in transitioning from the current access charge regime to an access charge structure which is consistent with the new competitive paradigm created by the 1996 Act is the treatment of the legacy costs which are now inflating access charges. As noted previously, access charges are currently set well in excess of the cost of originating and terminating interstate, interexchange traffic. For example, an analysis performed by Hatfield Associates, Inc. ("Hatfield") entitled "The Cost of Basic Network Elements: Theory, Modeling and Policy Implications" ("Hatfield Report") and dated March 29, 1996, concluded on the basis of 1993 data that the LECs' total network revenues exceeded the economic cost of providing unbundled network elements by $46 billion, with the vast bulk of the "gap" attributable to over-built plant,[67] excess operations (customer and corporate)

[67] "There has been very little oversight of LEC investment plans by the FCC. Telephone companies have basically been free to upgrade network capacity and capabilities in anticipation of entry into competitive markets, and at the expense of current monopoly ratepayers. This excess capacity can manifest itself in terms of both excess facilities and excess capabilities. An example of the latter is building functionality or capability into today's networks that is needed for future competitive services." Hatfield Report at 40.

expense[68] and operational inefficiencies.[69] Focusing exclusively on the access component, AT&T has estimated that interstate access charges exceed the economic cost of originating and terminating interstate, interexchange traffic by more than $11 billion, with only $4 billion necessary for high cost support. The remaining $7 billion AT&T characterizes as "pure uneconomic subsidy to monopoly incumbent local exchange carriers."[70]

A substantial portion of the inflated price of interstate access is attributable to excess costs and historical inefficiencies which were introduced during the days of rate-of-return regulation and which remain embedded in today's access charges. If interstate access were priced at the forward-looking, economic cost of traffic origination/termination and subsidies were recovered elsewhere, access charges would drop by more than two-thirds. The 1996 Act requires that universal service support shall be "explicit," rather than recovered indirectly through charges

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68 "Pure economic overhead is likely to be a small percentage of the total revenue requirement. Certainly, less than one percent of total revenue requirement for large firms such as the LECs would be required to pay for the 'president's desk.' To the extent the remaining corporate operations expenses are larger than this amount, they are likely paying for activities related to entering new markets, or simply represent waste and inefficiency." Hatfield Report at 43.

"Customer operations expenses include billing and account maintenance. Therefore, these expenses are part of the economic cost of existing end-user services. Customer operations expenses will be minimal in the case of selling unbundled network elements. Instead of billing and managing expenses for millions of retail customer accounts, the LECs will be selling to a small group of competing local and long distance carriers." Hatfield Report at 44.

69 "Rate of return regulation . . . provides well-known incentives for the regulated firm to overinvest. This form of regulation also limits incentives for regulated firms to control their expenses. The LECs have enjoyed a virtual monopoly position for many years. Therefore, it is unreasonable to assume that the LEC organizations are as efficient as they would be in a more competitive environment." Hatfield Report at 37.

70 Letter to Regina Keeney, Chief, Common Carrier Bureau, Federal Communications Commission, from R. Gerard Salemme, Vice President, Government Affairs, AT&T Corp., dated November 22, 1996.

designed to recover multiple costs.[71] The principal issue that remains then is what recovery, if any, should be permitted of embedded costs reflective of excess spending and inefficiency.[72]

As the Commission has recently held, "regulation does not and should not guarantee full recovery of [the incumbent LECs'] embedded costs."[73] Just as the Commission determined that "increasing the rates for interconnection and unbundled elements offered to competitors would interfere with the development of efficient competition,"[74] TRA submits that pricing interstate access at anything more than the forward-looking, economic cost of originating and terminating interstate, interexchange traffic would hinder existing interexchange and emerging local exchange/exchange access competition.

Pricing access at TSLRIC/TELRIC levels guarantees incumbent LECs a full competitive return on the present value of the facilities needed to originate and terminate interstate, interexchange traffic. As the Commission has correctly concluded, rates arrived at using this methodology approximate the rates that a competitive market would have produced, thereby capturing the "economic cost" of access services and facilities:[75]

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[71] 47 U.S.C. § 254.

[72] While some portion of the remaining overage is apparently attributable to the overallocation of costs to the interstate jurisdiction, very little appears to have been occasioned by under-depreciation of incumbent LEC capital assets. Hatfield Report at 39 (*citing* Baseman, Kenneth C., and Van Gieson, Harold, Depreciation Policy in the Telecommunications Industry: Implications for Cost Recovery by the Local Exchange Carriers, p. 2 (1995)).

[73] Local Competition First Report and Order, FCC 96-325 at ¶ 706.

[74] Id.

[75] Id. at ¶ 679.

> [I]t is current or anticipated cost, rather than historical cost, that is relevant to business decisions to enter markets and price products. The business manager makes a decision to enter a new market by comparing anticipated revenues (at a particular price) with anticipated additional costs. . . . The historical costs associated with the plant already in place are essentially irrelevant to this decision since those costs are "sunk" and unavoidable and are unaffected by the new product decision.[76]

Certainly, there is no single overriding definition of "cost" and no absolute entitlement to recover the costs so defined. "[C]ost itself is an inexact standard;"[77] "neither law nor economics has yet devised generally acceptable standards."[78] Moreover, there is no single rate or ratemaking methodology. Administrative agencies are "not bound to the use of any single formula or combination of formulae in determining rates."[79] Certainly, no mandate exists that all costs must be captured in setting rates.[80] Rather, "[t]he guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory."[81]

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76 MCI Communications Corp. v. American Tel. & Tel. Co., 708 F.2d 1081, 1116-17 (7th Cir.), *cert. denied* 464 U.S. 891(1983).

77 Alabama Elec. Co-op, Inc. v. FERC, 684 F.2d 20, 27 (D.C. Cir. 1982).

78 Permian Basin Area Rate Cases, 390 U.S. 747, 790 (1968); *see* Bonright, J. C., Principles of Public Utility Rates, p. 109 (2d ed. 1987) ("'Cost,' like 'value,' is a word of many meanings, with the result that people who disagree, not just on minor details but on major principles of ratemaking policy, all may subscribe to some version of the principle of service at cost.").

79 Federal Power Comm'n v. Hope Natural Gas Co., 320 U.S. 591, 602 (1944).

80 Illinois Bell Tel. Co v. FCC, 988 F.2d 1254, 1263 (D.C. Cir. 1993).

81 Duquesne Light Co. v. Barasch, 488 U.S. 299, 307 (1989).

Accordingly, TRA submits that the Commission need not, and should not, permit the incumbent LECs to recover the difference between revenues generated by access charges based on embedded costs and access charges based on forward-looking costs. As directly stated by the Commission elsewhere:

> Just compensation is not, however, intended to permit recovery of monopoly rents. The just and reasonable rate standard of TELRIC plus a reasonable allocation of the joint and common costs of providing network elements that we are adopting attempts to replicate, with respect to bottleneck monopoly elements, the rates that would be charged in a competitive market, and we believe is entirely consistent with the just compensation standard.[82]

E. The Carrier Common Line Charge and the Transport Interconnection Charge Should be Eliminated and the Subscriber Line Charge Increased (¶¶ 57 - 70)

The Carrier Common Line Charge ("CCLC") and the Subscriber Line Charge ("SLC" or End User Common Line Charge ("EUCL")) are designed to recover that portion of the cost of subscriber lines allocated to the interstate jurisdiction. The SLC is a flat-rate charge assessed monthly on end users. For residential and single line business customers, the SLC is currently capped at $3.50 per line; the per-line SLC cap for multi-line business customers is $6.00. Any loop costs allocated to the interstate jurisdiction which are not recovered through SLCs, as well as a few non-subscriber line items such as long term support, are recovered through usage-sensitive CCLCs assessed on IXCs. If the CCLC comes to less than $0.01 per minute, the same charge will be assessed on originating and terminating access; if, however, the event the average rate would exceed $0.01 per minute, the originating CCLC will be set at $0.01

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[82] Local Competition First Report and Order, FCC 96-325 at ¶ 740.

and the remainder will be assessed on terminating access.[83] The non-traffic-sensitive costs ("NTS") associated with the local loop are, accordingly, being recovered in part in the manner in which they arise -- *i.e.,* on a flat-rated basis -- from the cost causer -- *i.e.,* the end user -- and in part on a non-cost-causitibe basis from IXCs.

The NPRM proposes to increase the per-line cap on the SLC for the second and additional lines used by residential customers and for all lines (or all lines beyond the primary line) used by multi-line business customers to the level necessary to recover associated per-line loop costs assigned to the interstate jurisdiction.[84] The NPRM declines, however, to increase the SLC cap for single line business users and for the primary line of residential users.[85] The NPRM further proposes to apply SLCs on a derived-channel basis to integrated services digital network ("ISDN") service.[86]

TRA agrees with the NPRM that the SLC for the second and additional lines used by residential customers and for all lines used by multi-line business customers should be allowed to increase to the level necessary to recover associated per-line loop costs assigned to the interstate jurisdiction. As the NPRM explains, such an approach would "allow incumbent LECs to recover interstate common line costs for multi-line business customers and for residential connections beyond the primary residential connection in a manner consistent with the way costs

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[83] "Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms," Common Carrier Bureau, Federal Communications Commission, 90 - 99 (Feb. 23, 1996).

[84] Notice, FCC 96-488 at ¶¶ 64 - 67.

[85] Id. at ¶ 65.

[86] Id. at ¶¶ 68 - 70.

are incurred."[87] TRA also concurs with the NPRM that SLCs should be applied to ISDN service on a derived-channel basis.

TRA, however, disagrees with the NPRM that the $3.50 cap on SLCs for residential and single-line business customers should be retained. TRA agrees with the NPRM that costs should be recovered from cost causers in a manner consistent with the way that the costs are incurred. The costs associated with subscriber loop plant are non-traffic-sensitive and used to connect end users to the public switched network; accordingly, loop costs should be recovered on a flat-rate basis from end users. As the NPRM acknowledges, recovering NTS loop costs through usage-sensitive charges levied on IXCs sends inaccurate pricing signals, thereby encouraging inefficient use of telecommunications services.[88] Universal service concerns should be addressed through explicit support payments, not through economically irrational rate structures.

The NPRM suggests a number of alternative means of recovering the costs currently recovered through CCLCs, including flat, per-line charges, "bulk-billing," "capacity charges," "trunk port charges," and "trunk port and line port charges."[89] All of these proposed charges would be assessed on IXCs. Initially, in the event that all SLCs were uncapped and allowed to recover the portion of subscriber line costs assigned to the interstate jurisdiction, none of these various charges would be necessary; the CCLC could simply be eliminated. TRA otherwise opposes these various options on the grounds that they fail to cure the basic flaw

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[87] Id. at ¶ 65.

[88] Id. at ¶ 55.

[89] Id. at ¶¶ 60 - 61.

the NPRM identified in the CCLC. None of these proposals recover costs from the cost-causer and therefore do not send accurate pricing signals to users of telecommunications services.

TRA agrees with the NPRM that the transport interconnection charge ("TIC") should be phased out.[90] The TIC is a non-cost-based charge designed to ensure "revenue neutrality" for incumbent LECs following expiration of the Modification of Final Judgment's "equal charge per unit of traffic" requirement.[91] It currently generates roughly 70 percent of incumbent LEC transport revenues, representing 80 percent of the tandem revenue requirement, and hence is little more than a contribution element intended to maintain incumbent LEC revenues at inflated level. TRA recommends use of the second general phase-out option outlined by the NPRM and adamantly opposes affording incumbent LECs "significant pricing flexibility" as part of any associated transition.[92] Thus, TRA agrees with the NPRM that "cost misallocations and other practices that cause costs to be included in the TIC" should be identified and quantified.[93] Thereafter, the costs so identified should be "reassigned to various access services . . . and to nonregulated activities, as appropriate."[94] Costs in excess of the forward-looking, economic costs of providing the associated facilities and services should simply be eliminated.

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[90] Id. at ¶ 98.

[91] Transport Rate Structure and Pricing, 7 FCC Rcd. 7006, 7038 (1992), *recon.* 8 FCC Rcd. 5370 (1993), *further recon.* 8 FCC Rcd. 6233 (1993), *further recon.* 10 FCC Rcd 3030 (1994), *further recon.* 10 FCC Rcd. 12979 (1995), *rev'd and remanded* Competitive Telecommunications Association v. FCC, 87 F.3d 522 (D.C. Cir. 1996).

[92] Notice, FCC 96-488 at ¶¶ 112 - 122.

[93] Id. at ¶ 116.

[94] Id.

On a more general note, TRA believes that certain principles should govern the recovery of costs associated with originating and terminating access. To this end, TRA concurs with the NPRM's assessment that costs are best recovered in the manner in which they are incurred. TRA submits that rates, including usage-sensitive and flat-rate charges, should reflect the forward-looking, economic cost of providing the associated facility or service. Finally, TRA submits that costs should be recovered from the cost causer. Hence, TRA agrees that local switching costs should be recovered through a combination of usage-sensitive and non-usage-sensitive rate elements.[95] And TRA does not oppose in principal the use of "call set-up" charges and "peak" and "off-peak" pricing in recovering local switching charges, but suggests that the Commission move cautiously to ensure that such new pricing tactics do not produce recoveries in excess of cost.[96] TRA also concurs with the NPRM that flat-rated charges are appropriate for entrance facilities and direct-trunked transport services.[97] With respect to the rate structure associated with the tandem-switched transport service facilities, TRA submits that the current rate structure, which provides IXCs a choice between two pricing options, is most consistent with the above-listed principles.

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[95] Id. at ¶¶ 72 - 73.

[96] Id. at ¶¶ 72 - 73.

[97] Id. at ¶ 86.

F. Additional Safeguards Should be Adopted with Respect to Terminating Access (¶¶ 271 -281)

As the NPRM correctly recognizes, terminating access will "remain a bottleneck controlled by whatever LEC provides access for a particular customer.[98] As explained by the NPRM, an IXC can shift its traffic to a competing provider of originating access (assuming such a competitor exists) in the event an LEC atttempts to extract excessive charges for originating access.[99] Given that the selection of the provider of terminating access lies with the called party, an IXC generally has no ability to influence which carrier will provide terminating access. Hence, "the presence of unbundled network elements or facilities-based competition may not affect terminating access charges."[100]

TRA submits that it is thus that much more imperative that terminating access charges be controlled. TRA, accordingly, urges the Commission to ensure that terminating access rates are set at the forward-looking, economic cost of terminating interstate, interexchange traffic. TRA believes that such costs would best be set by requiring the conduct by incumbent LECs of TSLRIC/TELRIC cost studies. TRA, however, does not disagree that terminating access costs could appropriately "be measured by the prices in reciprocal compensation arrangements for the transport and termination charges of telecommunications pursuant to sections 251(b)(5) and 252(d)(2).[101] While these charges may not include NTS costs associated with local switching or

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[98] Id. at ¶ 271.

[99] Id.

[100] Id.

[101] Id. at ¶ 274.

the subscriber line, such costs, as TRA has recommended above, should be recovered through flat-rated charges.

TRA finds unconvincing the NPRM's suggestion that high terminating access rates may serve the public good by "creat[ing] and incentive for IXCs to win the local customer."[102] As the NPRM acknowledges, "winning the end user as customer will allow the IXC to save only a fraction of the total terminating access charges generated by the end user., because the IXC will carry only a fraction of the calls received by the end user."[103] Certainly, incentives to compete for local customers abound; it is not necessary to allow inflated terminating access charges to create such incentives. Moreover, determinations as to which local markets to serve will not be driven by terminating access rates, but by complex business judgments. Small to mid-sized carriers will not be able to serve every local market in the country and should not be penalized because of that limitation.

TRA concurs with the NPRM's view that there does not appear to be any need to impose additional regulatory constraints on terminating access provided by competitive access providers.[104] Market forces appear adequate to discipline the behavior of entities possessed of such limited market share.

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[102] Id. at ¶ 272.

[103] Id.

[104] Id. at ¶ 272.

G. Once Reformed and Reduced to Forward-Looking Economic Cost, Interstate Access Charges Should be Assessed on Enhanced Services Providers (¶¶ 282 - 290)

The NPRM tentatively concludes that "information service providers should not be required to pay interstate access charges as currently constituted."[105] As explained by the NPRM, public policy considerations dictate that an access charge system which "includes non-cost-based rates and inefficient rate structures" should not be extended to "an additional class of users."[106] In particular, the NPRM emphasizes that any such action could have "potentially detrimental effects on the growth of the still-evolving information services industry."[107] Hence, the NPRM asserts that "the current pricing structure should not be changed so long as the existing access charge system remains in place."[108]

TRA does not disagree with the NPRM's assessment, provided that this proceeding results in reformation of the existing access charge regime, rationalization of access charge structures and levels, and prompt and dramatic reductions in currently inflated access charges. Certainly, it makes no sense to impose an onerous access charge structure on additional users if that structure is soon to be changed. TRA, however, disagrees that there exists any other reason to treat enhanced service providers ("ESPs") preferentially, particularly when ESPs are providing services which compete directly with basic telephony and hence, are being afforded an unfair competitive advantage.

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[105] Id. at ¶ 288.

[106] Id.

[107] Id.

[108] Id.

The exemption afforded ESPs from interstate access charges in 1983 was intended to be "temporary," designed to avoid unduly burdening the then "fledgling" ESP industry and disrupting the provision of information services to the public.[109] The Commission, however, has always been cognizant of the discriminatory aspects of the ESP exemption, repeatedly expressing concern that "to the extent enhanced service providers are exempt from switched access charges, other users of exchange access are forced to bear a disproportionate share of the local exchange costs that access charges are designed to cover."[110] The Commission nonetheless elected to retain the exemption in 1988 and again in 1991, reasoning that other countervailing factors then justified such action.[111] The Commission reasoned in both instances that because the enhanced services industry was "in a uniquely complex period of transition," imposition of switched access charges could result in industry disruption, market displacement and service impairment "without yielding concomitant benefits."[112]

If the Commission's access charge regime is reformed, access structures are rationalized and access charges are dramatically reduced, there will no longer be any reason not to extend interstate switched access charges to ESPs, including Internet access providers ("IAPs"). Not only would access charges be reduced by a substantial margin, thereby mitigating any

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[109] Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631, ¶ 2 (1988).

[110] Id. at ¶¶ 2, 19.

[111] Id. at ¶¶ 13-20; *see also* Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd. 4524, ¶¶ 544-65 (1991).

[112] Id.

adverse impact on ESPs, but the significant maturation of the "fledgling" enhanced services industry in the decade following adoption of the ESP exemption and in the five years since the Commission last elected to retain the exemption has dramatically reduced the justification for the additional protections afforded ESPs.[113]

As to the continuing dramatic changes brought about by legislation, regulation and technological advancements, the enhanced services industry is not being uniquely impacted; indeed, the entire telecommunications industry is being buffeted seemingly on a daily basis. Other recipients of "temporary" exemptions from the Commission's "comprehensive" access charge regime -- including TRA's resale carrier members -- now pay interstate switched access charges,[114] further fulfilling the Commission's stated goal of "distribut[ing] the costs of exchange access service fairly among all users of exchange access, regardless of their designation as carriers, non-carrier service providers or private customers."[115] It is time for ESPs to do likewise.

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[113] As the Commission has recognized, the enhanced services industry is now a multi-billion dollar market segment populated by major corporate providers and experiencing double-digit growth. Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, 10 FCC Rcd. 8360, ¶ 33 (1995) (*citing* U.S. Industrial Outlook 1994, U.S. Department of Commerce/International Trade Administration (January, 1994)).

[114] WATS-Related and Other Amendments of Part 69 of the Commission's Rules, CC Docket No. 86-1, FCC 86-115 (released March 21, 1986), FCC 86-377 (released August 26, 1986).

[115] Amendment of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd. 2631 at ¶ 2 (*citing* MTS and WATS Market Structure, 97 F.C.C.2d 682, ¶ 77 (1983)).

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with these comments.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: ______________________

Charles C. Hunter
Catherine M. Hannan
HUNTER & MOW, P.C.
1620 I Street, N.W.
Suite 701
Washington, D.C. 20006
(202) 293-2500

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Its Attorneys